

STATE OF MICHIGAN
COURT OF APPEALS

In re NEWMAN, Minors.

UNPUBLISHED

May 10, 2018

No. 340628

St. Clair Circuit Court

Family Division

LC No. 15-000074-NA

Before: CAMERON, P.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's rights to her two eldest children, LN and FN, pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent), and her rights to her youngest, EN, pursuant to factors (g) and (j). Respondent now challenges the evidentiary support for these termination grounds and contends that termination of her parental rights was not in her children's best interests. We discern no error and affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) removed LN and FN from the care of respondent and her husband in early 2015 after FN suffered severe scalding burns to his hands and feet. The parents explained that the injuries were accidental but their stories did not comport with the physical realities, suggesting abuse. The DHHS sought termination of both parents' rights in the initial petition. The circuit court suspended parenting time as of March 11, 2015, the court adjudicated the parents unfit on June 30, and terminated their parental rights in August 2015, without services ever having been provided. This Court reversed and remanded for a DHHS investigation and the provision of reunification services. *In re Newman*, unpublished opinion of the Court of Appeals, issued September 29, 2016 (Docket Nos. 329063, 329076).

While the first appeal was pending, respondent gave birth to EN in Kentucky. Kentucky Child Protective Services took EN directly into care because he was born with THC, Tramadol, and Tramadol GC in his system and because of the earlier termination of respondent's parental rights. Respondent's Kentucky home was also deemed unsafe for a child. EN was eventually transferred to Michigan and placed in the same foster home as his siblings. Michigan courts took jurisdiction over EN on February 21, 2017.

Following this Court's remand, the DHHS instituted a parent-agency agreement and attempted to provide services to the parents. Respondent began supervised parenting time sessions and was ordered to submit to drug screens, undergo psychological and substance abuse evaluations, find housing and employment, and begin therapy, anger management counseling, and parenting classes. Respondent's services did not go well. She bounced between the homes of friends and relatives. She was briefly employed but was fired because of her temper. Respondent missed half of her drug screens and tested positive for THC 10 times. She claimed that medication she took to treat narcolepsy caused this result. However, respondent never provided any medical documentation of her condition or her prescription. Respondent later admitted that she used marijuana medically instead of her prescribed treatment and had allowed her medical marijuana card to expire. Respondent did not receive a psychological examination until late in the proceedings, after three separate referrals from DHHS. She began counseling but was quickly banned from the only anger management service provider in her locality because she threatened the staff.

Supervised parenting time sessions also did not go well. Respondent was frequently late for visits. Respondent was combative with the caseworker and swore and yelled at workers in front of the children. At one visit, respondent threatened the children's counselor, who later filed a police report against her. Respondent also tended to focus her attention on LN, to the detriment of FN and EN. During the period that parenting time sessions were restored, FN became "more defiant towards the foster parents" and LN experienced night terrors and crying spells.

On April 19, 2017, new problems arose. Respondent was arrested for felonious assault, assaulting a police officer, reckless driving, damaging property, and fleeing the scene of an accident. Respondent pleaded guilty and the court sentenced her to 180 days' jail time. While incarcerated, respondent threatened jail staff and was placed in "lock-down."

Ultimately, the DHHS again sought termination of respondent's parental rights on May 19, 2017.¹ The court determined that respondent would be unable to provide proper care and custody within a reasonable time given her lack of cooperation with services. The children would also be in danger if returned to their mother given respondent's inability "to regulate and control her behavior."

II. STATUTORY GROUNDS

Respondent now challenges the evidentiary support for the statutory grounds leading to termination. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven by the DHHS. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). When termination is sought in a supplemental petition based on new grounds, the DHHS must present legally admissible evidence in support. *In re DMK*, 289 Mich

¹ The DHHS also sought termination of the father's parental rights and he signed a voluntary release on September 6, 2017.

App 246, 258; 796 NW2d 129 (2010). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

As noted, the court terminated respondent's parental rights to LN and FN under MCL 712A.19b(3)(c)(i), (g) and (j) and to EN under factors (g) and (j). The statute provides, in relevant part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The circuit court properly terminated respondent's parental rights to LN and FN as the conditions that led to adjudication continued to exist despite the children's extensive placement in foster care. The DHHS took the children into care primarily based on suspicion of child abuse. Adjudication was further based on respondent's substance abuse and homelessness. To prevent future abuse and to treat respondent's underlying mental health and substance abuse issues, respondent was ordered to engage in a series of services. Respondent began few and completed none. By the time of the termination hearing, respondent had shown little to no improvement. She was still using marijuana, did not have a stable home or employment, exhibited extreme anger management issues, and was inappropriate during parenting time

sessions. A parent has a “responsibility . . . to participate in the services that are offered,” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012), and “a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent’s custody.” *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Given respondent’s almost complete lack of compliance, we can find no fault in the circuit court’s termination of respondent’s parental rights on this ground.

Termination of respondent’s parental rights to all three children was also supportable based on her inability to provide proper care and custody for her children within a reasonable time. “[A] parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody for the child.” *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Again, respondent has not completed any services geared toward reunification. Respondent was advised early in the proceedings that her marijuana use was an issue and yet she continued to use the controlled substance instead of prescribed medication to control a condition for which she never provided medical documentation. Respondent has not completed parenting classes or counseling to prevent future child abuse. She has been unable to maintain employment due to her anger management issues. And respondent added to the litany of obstacles to reunification by engaging in criminal behavior, leading to her incarceration during the proceedings.

Moreover, respondent’s anger management issues, which she did not hide from her children, placed her children at risk of harm if returned to her care, supporting termination under factor (j). For purposes of MCL 712A.19b(3)(j), “harm” includes both physical and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Respondent showed no qualms about swearing and yelling at parenting time supervisors in front of her children. Her behavior at one parenting time session even led to police intervention. Respondent’s children showed signs of additional trauma as a result of these visits. LN and FN were already being treated for post-traumatic stress disorder and required additional assistance once visits were restored. Even if respondent never turns this anger on her children, witnessing their mother threaten others in their presence has proved traumatic and the children would face similar future harm given respondent’s failure to address her anger management issues.

III. BEST INTERESTS

Respondent further contends that termination of her parental rights was not in the children’s best interests. In this regard, respondent argues that the lack of a parent-child bond was caused by the DHHS’s denial of parenting time when the initial petition was filed, and the circuit court’s prior improper termination of her parental rights.

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). “[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *Moss*, 301 Mich App at 90. The court should weigh all the evidence available to it in determining the child’s best interests. *Trejo*, 462 Mich at 356-357. Relevant factors include “the child’s bond to the parent, the parent’s parenting ability, [and] the child’s need for permanency, stability, and finality. . . .” *Olive/Metts*, 297 Mich App at 41-42

(citations omitted). “The trial court may also consider . . . the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, [and] the children’s well-being while in care. . . .” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The advantages of the child’s foster placement over placement with the parent are a relevant consideration, *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009), as well as the length of time the child has been in care, *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015), and whether it is likely that “the child could be returned to [the parent’s] home within the foreseeable future, if at all.” *Frey*, 297 Mich App at 248-249. Additionally, evidence of a parent’s abuse of a child may be considered in determining a child’s best interest. *In re Powers*, 244 Mich App 111, 120; 624 NW2d 472 (2000).

In finding that termination of respondent’s parental rights was in the best interests of her children, the court emphasized respondent’s unwillingness to take responsibility for her actions that led to her children being removed from her care. This lack of insight prevented respondent from working toward reunification and developing a bond with her children. Respondent’s attitude with staff during parenting time, a time when she should have been focusing on her children, resulted in additional trauma and hindered the bonding experience. Indeed, once parenting time was suspended, the children again showed improvement. And respondent refused to work with the clinician whose primary purpose was to help her reestablish a bond with the children. The lack of a parent-child bond simply is not the complete fault of the DHHS.

Beyond the lack of a parent-child bond, the children are doing very well in their foster placement and the foster parents wish to adopt all three siblings. All three children have been in this home from a very young age. Given respondent’s failure to cooperate with services, it is unlikely that she would be able to regain custody any time in the near future. Accordingly, remaining in this foster care placement was the children’s best chance to achieve stability and permanence. Overall, we discern no error in the termination of respondent’s parental rights.

We affirm.

/s/ Thomas C. Cameron
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher